

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION**

RESOLUTION No. R2-2004-0016

AUTHORIZING THE EXECUTIVE OFFICER TO ENTER INTO AN AGREEMENT FOR MUTUAL RELEASE AND COVENANT NOT TO SUE WITH ARROWHEAD MARSH LLC FOR PROPERTY AT THE FORMER PORT OF OAKLAND AIRPORT OVERFLOW PARKING LOT AT PARDEE DRIVE & SWAN WAY, IN THE CITY OF OAKLAND, ALAMEDA COUNTY

WHEREAS, the California Regional Water Quality Control Board, San Francisco Bay Region (hereinafter Board), finds that:

1. **Jurisdiction:** The former Port of Oakland Airport Overflow Parking Lot is located at Pardee Drive & Swan Way in Oakland, California, comprising approximately 35.5 acres (the Property). The Property is more accurately described in the legal description (Exhibit A to the Attachment). The Board has authority as a state regulatory agency under the California Water Code to oversee site cleanup for the residual pollutants and contaminants found on the Property.
2. **Site Investigations:** Investigations have shown that the Property was historically marshland that was filled by the Port of Oakland with undocumented fill materials during the 1960's and 1970's. Recent soil and groundwater testing of the Property shows that it contains detectable concentrations of a number of regulated chemical compounds, including polycyclic aromatic hydrocarbons, total petroleum hydrocarbons as diesel, gasoline and motor oil, grease, volatile organic compounds, chlorinated solvents, and heavy metals. Groundwater is not currently used as a drinking water supply and no such use or need is anticipated for the foreseeable future, as groundwater is brackish due to the proximity of the Bay.
3. **Current Property Situation:** The Property is currently owned by the Port of Oakland and most currently used as an Airport Overflow Parking Lot. No other former uses are known. The Port and Arrowhead have entered into negotiations for Arrowhead's purchase of the Property.
4. **Site Redevelopment:** Arrowhead Marsh LLC, a Delaware limited liability company, ("Arrowhead") intends to purchase the Property on or about March 29, 2004, perform minimal Property demolition, and over time build commercial, industrial, and office facilities for use and/or sale.
5. **Future Actions Under Redevelopment:** A Soil Management Plan (SMP) has been developed and will be used during construction and post-construction activities. Any contaminated soil found during the Property demolition, grading, or redevelopment will be handled in accordance with the procedures described in the SMP. (The SMP includes contingency measures in the event that presently unknown contamination is discovered during Property redevelopment and also specifies sampling requirements to determine whether the soils or groundwater encountered during Property redevelopment are contaminated.) Any contaminated groundwater encountered in excavations for Property improvements will be handled appropriately as specified in the approved SMP and in accordance with appropriate laws and regulations. Based on the extent of the investigative work completed at the Property to date and on the Board's soil and water environmental risk levels, the Property conditions will not create an unacceptable risk to human health or the environment after redevelopment of the Property provided certain Property uses are restricted and engineering controls described in the SMP are managed. Based upon the known conditions, the expected levels of pollution remaining after redevelopment, and the restrictions required in the Mutual Release and Covenant Not to Sue as well as the required Covenant and


Environmental Restriction on Property (see below), the Board does not expect any further remediation of soil and/or groundwater will be needed.

6. **Arrowhead Marsh LLC's Request:** Arrowhead seeks a commitment from the Board that Arrowhead and their members, officers, directors, shareholders, employees, partners, partnerships and partners of such partnerships, representatives, agents, affiliates, tenants, lenders, agents, representatives, and their respective assigns and successors ("Buyer Related Parties") in interest will not be named as dischargers (or responsible parties) in a Board enforcement order with regard to existing known conditions of contamination solely by virtue of being involved in the purchase and redevelopment of the Property. Specifically, Arrowhead requests that the Board issue a Mutual Release and Covenant Not to Sue ("Mutual Release") to the Buyer Related Parties for the Property. Without this assurance from the Board, Partners states that it will not be able or willing to complete the purchase and redevelopment of the Property.
7. **Deed Restriction:** As a condition of the Mutual Release and as part of the Property Redevelopment, Arrowhead will submit for the Executive Officer's approval and execution a satisfactory deed restriction referred to as a Covenant and Environmental Restriction on Property (CERP). Upon execution by the Board's Executive Officer, Arrowhead will record the CERP on the Property. In relevant part, the CERP will restrict the land use to commercial, office, and industrial uses only (i.e., no permanent human habitation under any land use, including single or multi-family housing, notify future owners of sub-surface contamination, restrict the extraction of groundwater, prohibit groundwater use as a source of drinking water, require implementation of the approved SMP, and allow for reasonable access by the Board and/or any other person required by the Board to conduct future investigations, monitoring and any necessary remediation.
8. **Board Authority:** Pursuant to Water Code §13304, the Board can enter into agreements whereby the Board covenants not to name prospective purchasers, tenants, lenders, and related parties in enforcement actions for known conditions of contamination. For instance, the Board may enter into such agreements if it sufficiently in the public interest to warrant expending public resources necessary to reach such an agreement.
9. **Benefits of Redevelopment:** The Property is under-utilized and is located in an area that is redeveloping to more intense commercial, office, and industrial uses from the former filled marshlands and/or parking lots. Redevelopment of the Property would have economic and social benefits to the local community and to the public at large. The proposed redevelopment will provide about 1,000 new jobs at full build out, utilize existing infrastructure, and increase payroll real estate, and income taxes accruing to the State and locality.
10. **CEQA:** The purchase of the Property is not an activity that requires Board approval. Furthermore, neither the Property transaction nor the Board's approval of the Mutual Release is a "project" as defined by Public Resources Code Section 21065 and 14 CCR 15378(a) such that the California Environmental Quality Act (CEQA) applies.
11. **Public Notice:** The Board provided notice of its intention to consider this matter at the March 17, 2004 Board meeting and provided an opportunity for interested persons to comment on the draft resolution and its attachments.
12. **Public Hearing:** The Board, at a public meeting, heard and considered all comments pertaining to this discharge.

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NOW, THEREFORE BE IT RESOLVED, that the Board authorizes the Executive Officer to negotiate minor amendments to the draft Mutual Release (Attachment), and to sign and execute the final Mutual Release and any other associated documents.

I, Bruce H. Wolfe, Executive Officer, do hereby certify that the foregoing is a full, true, and correct copy of a Resolution adopted by the California Regional Water Quality Control Board, San Francisco Bay Region, on March 17, 2004.



Bruce H. Wolfe
Executive Officer

Attachment – Mutual Release and Covenant Not to Sue

Exhibit A. Property Legal Description

Exhibit B. Soil Management Plan

Exhibit C. Covenant and Environmental Restriction on Property

Exhibit D. Written Instrument of Release and Transfer Document

**California Regional Water Quality Control Board
San Francisco Bay Region**

**Attachment to Resolution No. R2-2004-0016
Mutual Release and Covenant Not To Sue
Former Port of Oakland Overflow Parking Lot
Pardee Drive & Swan Way, Oakland, California**

I. Introduction

This **Mutual Release and Covenant Not to Sue** ("Mutual Release") is provided in response to a request by the prospective purchaser, Arrowhead Marsh LLC ("Buyer"), a Delaware Limited Liability Company and pursuant to San Francisco Bay Regional Water Quality Control Board ("Regional Board") Resolution No. R2-2004-0016 ("Resolution") authorizing its Executive Officer to finalize negotiations and sign the Mutual Release and associated documents concerning the former Port of Oakland Airport Overflow Parking Lot located at Pardee Drive and Swan Way, Oakland, California ("Property"). The legal description of the Property is attached hereto and incorporated by reference as "Exhibit A."

Buyer desires a commitment, to the maximum extent permitted by law, that it, its parents, subsidiaries, partners, partnerships, affiliates, subsequent purchasers, tenants, lenders, and any occupants of the Property, as well as all of their members, partners, partnerships, shareholders, directors, officers, employees, agents, attorneys, and their respective successors and assigns (individually, "Released Party" and collectively, "Released Parties") will not be subject to liability for, or the subject of any actions, orders, or other liabilities or requirements related to or arising from the "Known Conditions" (defined below).

II. Definitions

For purposes of this Mutual Release, "Known Conditions" or "Known Condition" means all conditions of pollution in, at, under, originating from or migrating onto or off of the Property or any portion thereof, that were known to the Regional Board as of the Effective Date (defined below). The phrase "known to the Regional Board" refers to information regarding pollution in, at, under, originating from or migrating onto or off of the Property, or any portion thereof, that was disclosed to the Regional Board or is reasonably discernible from the reports, investigations, workplans, or any other information submitted to the Regional Board prior to the Effective Date. With respect to any claim, cause of action, investigation, or enforcement action asserted or required by the Regional Board, the Released Parties shall bear the burden of proving to the Regional Board that the condition of pollution at, under, or originating from the Property for which the Regional Board is pursuing a claim, cause of action, investigation or enforcement action is a Known Condition.

III. Findings of Fact

This Mutual Release is based on the following findings by the Regional Board:

1. The Property is within the jurisdiction of the Regional Board due to the Known Conditions. The Regional Board enters into this Agreement pursuant to California Water Code Sections 13000 et seq. The Regional Board may release and covenant not to sue or assert claims for environmental investigation or remediation or other related claims against prospective purchasers, and related parties, of environmentally impacted properties, especially where, as here, the agreement is sufficiently in the public interest.

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2. Investigations have shown that the Property was historically marshland that was filled by the Port of Oakland with undocumented fill materials during the 1960's and 1970's. Recent soil and groundwater testing of the Property shows that it contains detectable concentrations of a number of regulated chemical compounds, including polycyclic aromatic hydrocarbons, total petroleum hydrocarbons as diesel, gasoline and motor oil, grease, volatile organic compounds, chlorinated solvents, and heavy metals. No further soil or groundwater cleanup is required or anticipated with respect to the Known Conditions. The contaminant concentrations are low enough to not present an unacceptable risk to human health or the environment if the Site is operated in a manner consistent with the Soil Management Plan ("SMP"), attached hereto and incorporated by reference as Exhibit B and the Covenant and Environmental Restriction ("CERP") attached hereto and incorporated by reference as Exhibit C.
3. No active unknown discharge of pollutants is believed to be currently occurring on the Property.
4. The Released Parties are not responsible parties or affiliated with a responsible party for the known contamination or pollution, and will not be prior to March 29, 2004, an owner of the Property. The sole interest of Buyer in the Property is to purchase and redevelop the Property.
5. Buyer is arranging for the redevelopment of the Property to a productive use that will benefit the public and the community. Estimated benefits to the community include infilling, the use of existing infrastructure, providing jobs for about 1,000 persons at full buildout, with increased payroll, income and real estate taxes accruing to the State and locality.
6. By entering into this Agreement, Buyer certifies that to the best of its knowledge and belief, it has fully and accurately disclosed to the Regional Board any and all information known to its officers, directors, employees, contractors and agents about pollution and/or contamination of the Property.
7. The Property is not the subject of active enforcement actions or agreement(s) with another agency to address the residual pollution at the site.
8. Buyer will pay for all reasonable costs associated with the Regional Board's development and oversight of this Mutual Release pursuant to the California Water Code.
9. This Mutual Release is consistent with the goals and purposes of state and federal law, including the Porter-Cologne Act and the federal Clean Water Act.
10. In order to ensure that no activities at the Property, with the exercise of due care, will aggravate, contribute to or create a condition of pollution or nuisance as a result of the Known Conditions, this Mutual Release requires the application of acceptable institutional controls to the Property as more fully set forth below.

IV. Agreement

1. In accordance with the Resolution, the Regional Board expressly finds that the Released Parties shall not be liable or otherwise responsible for such Known Conditions and hereby covenants and agrees not to initiate, bring, or support any claim, order, demand, enforcement action or other civil or administrative proceeding against the Released Parties or their respective successors and assigns upon satisfaction of the conditions set forth in the next sentence with respect to such Known Conditions under any local, state or federal statute, common law, or equitable doctrine, including but not limited

to, in their entirety, the United States Code, the various California Codes, or other applicable laws, regulations, ordinances, or civil, judicial or administrative authorities, having application to the handling, release, presence, migration to, through or from, cleanup, containment or maintenance of the Known Conditions at, on, under or originating from the Property, or any portion thereof. This Mutual Release shall inure to the benefit of, and pass with each and every portion of the Property and shall benefit any respective successors and assignees of the Released Parties, provided such successors and assignees did not cause or contribute to the Known Conditions and provided further each such party that is not a signatory to this Mutual Release executes a written instrument in the form of Exhibit D hereof.

2. To the extent the Release Parties are entitled to protection from contribution actions or claims as provided by CERCLA Section 113(f)(2), 42 U.S.C. Section 9613(f)(2), for matters addressed in the Resolution, the Mutual Release and Covenant Not to Sue, the CERP and SMP, the parties agree that the Released Parties are entitled to invoke such protection.
3. This Release shall remain effective notwithstanding the revocation or modification of Board Resolution No. R2-2004-0016, and shall be without prejudice to the ability of the Regional Board to take action against any party other than the Released Parties, relating to the investigation, cleanup, or cost of investigation or cleanup of the Known Conditions. Except as provided in Paragraph 6, nothing contained in this Mutual Release is intended to waive, limit, preclude, diminish or hinder any right of the Released Parties now or in the future available in law, equity, or by agreement.
4. Notwithstanding any other provisions of this Mutual Release, the Regional Board reserves the right to assert any claims, enforcement actions or other civil or administrative proceeding against the respective Released Parties arising after the Effective Date which are based on the failure of the respective Released Parties, to the extent they have control over the Property, to (i) exercise due care at the Property with respect to the Known Conditions, (ii) comply with the above-described findings, (iii) comply with the CERP and the SMP, and (iv) cooperate in providing reasonable access to the Property as required by the Regional Board. If the Regional Board determines that a Released Party has failed to materially comply with any of these four enumerated requirements, after notice and reasonable opportunity for cure, and the Regional Board elects to proceed against that Released Party, then this Mutual Release shall be suspended as to that Released Party, and the Regional Board and the Released Party shall then have any rights or defenses they would have had as if this Mutual Release and Covenant Not to Sue had not existed. If, following such proceeding, the Regional Board determines such action to be warranted, it may declare this Mutual Release to be null and void, with respect to that specific Released Party.
5. The reservation by the Regional Board set forth in Paragraph 4 shall be separately and distinctly applied with respect to each of the Released Parties, the intent being that failure by a particular Released Party to comply with any applicable requirement shall not render the Regional Board's covenant inapplicable to any other Released Party. Nothing contained in this Mutual Release shall be deemed a waiver of, or a release by, any Released Party of any defense available to such Released Party in response to any claim, order, demand, enforcement action or other civil or administrative proceeding by the Regional Board in contravention of this Mutual Release.
6. In partial consideration therefore, the Released Parties, on behalf of themselves and their respective successors in interest, hereby release and covenant not to sue the Regional Board, its authorized officers, employees or representatives, with respect to any and all liability or claims associated with or arising out of the Known Conditions.

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7. The Mutual Release shall not prohibit the Regional Board from asserting any claim, enforcement action, or other civil or administrative proceeding related to any condition of pollution at, under, or originating from the Property that are not Known Conditions.
8. Buyer will submit a deed restriction referred to as CERP in a form acceptable to the Executive Officer and in accordance with the provisions of Paragraph 10, below. Upon execution by the Regional Board's Executive Officer, Buyer will record the CERP on the Property. In relevant part, the CERP will restrict land use, restrict the use of groundwater, notify future owners and occupants of subsurface contamination, and restrict the excavation of soil. This CERP shall be recorded with the Alameda County Recorder's Office within the time period set forth in Paragraph 11, below.
9. Each Released Party not represented as a signatory below shall, as a precondition to receiving the benefits conferred by this Mutual Release, execute a written instrument in the form attached hereto and incorporated by reference as Exhibit D. Execution and mailing of Exhibit D to the Regional Board by or on behalf of any corporation, partnership, or other entity, shall be sufficient to confer the benefits of the Mutual Release upon all affiliates, parent or subsidiary corporations, and the respective directors, officers, employees, partners, members, agents, successors, and assigns of each such entity.
10. The Released Parties further agree to exercise due care at the Property with respect to the Known Conditions, to comply with the above-described CERP and SMP, to comply with all applicable local, state, and federal laws and regulations regarding the Property, and to cooperate in providing the Board reasonable access to the Property for any necessary monitoring purposes and any necessary operation, maintenance, and repair of wells and remediation facilities.
11. This Mutual Release shall be in full force and effect from the Effective Date. The Effective Date shall be March 29, 2004. Buyer shall have ninety (90) days from adoption of Resolution No. R2-2004-0016 to record the Mutual Release and Exhibits A-D against the Property, provided that such ninety (90) day period shall be extended by the period of time required by the Executive Officer to fully execute the Mutual Release and CERP. A copy of the recorded Mutual Release and Exhibits A-D shall be provided to the Regional Board within twenty (20) days of the recording. The Regional Board shall provide acknowledgement of receipt of the recordings as required by this paragraph. Notwithstanding anything to the contrary in the foregoing, if Buyer or its successor(s) fails to record the Mutual Release and Exhibits A-D within the time frame set forth above, and the Board or Executive Officer in its discretion does not extend the time, this Mutual Release shall automatically terminate.
12. This Mutual Release may be executed in one or more counterparts, each such counterpart being deemed an original but all counterparts constituting a single instrument.
13. Each of the undersigned parties hereby certifies, and warrants that he or she is authorized to bind his or her agency or entity to the continuing obligations described herein.

**California Regional Water Quality Control Board
San Francisco Bay Region**

Exhibit A to the Mutual Release Attachment to Resolution No. R2-2004-0016

Legal Description of the Property in the City of Oakland

The land referred to in San Francisco Bay Regional Water Quality Board's Resolution R2-2004-0016, the Mutual Release and in Exhibits A-D thereto consists of one (1) Parcel situated in the State of California, County of Alameda, City of Oakland, and is more particularly described as follows:

All that certain real property situate in the city of Oakland, county of Alameda, state of California, described as follows:

Being all of Lot 2 as said lot is shown on Record of Survey number 1766 filed March 6, 2002 in book 27 of records of survey at pages 30 through 33, Alameda County records, more particularly described as follows:

Commencing at port of Oakland monument "Ear Swan" as said monument is shown on Record of Survey number 1546 filed November 2, 1988 in book 22 of records of survey at pages 71 through 75, Alameda County records, said monument bears North 53°47'20" West, 2131.41 feet from port of Oakland monument "A016" as said monument is shown on Record of Survey number 990 filed July 19, 1994 in book 18 of records of survey at pages 50 through 60, Alameda County records;

Thence North 28°45'40" East, 341.95 feet to the intersection of the northwesterly right of way line of Swan Way as said right of way line is shown on port of Oakland plans AA-2408 with the northerly right of way line of Doolittle Drive as said drive is described in port ordinance number 582;

Thence along said northwesterly right of way line of Swan Way, North 35°51'56" East, 269.32 feet;

Thence continuing along said northwesterly right of way line, northeasterly along the arc of a 549.46-foot radius, tangent curve to the left, through a central angle of 22°42'03", an arc distance of 217.90 feet;

Thence continuing along said northwesterly right of way line, North 13°09'53" East, 49.87 feet to the southeasterly most corner of said Lot 2, said corner being the TRUE POINT OF BEGINNING of this description;

Thence leaving said northwesterly right of way line of Swan Way, along the southwesterly line of said Lot 2, the following five courses:

1. Westerly along the arc of a 437.57-foot radius, non-tangent curve to the right, the center of which curve bears North 20°42'16" East, through a central angle of 22°47'01", an arc distance of 174.00 feet;
2. North 46°30'43" West, 92.23 feet;
3. Northwestery along the arc of a 999.93-foot radius, tangent curve to the right, through a central angle of 27°40'22", an arc distance of 482.95 feet;
4. North 19°40'20" West, 119.76 feet; and
5. North 16°57'40" West, 347.75 feet to the westerly most corner of said Lot 2;

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Thence along the northwesterly line of said Lot 2, the following three courses:

1. North $56^{\circ}09'36''$ East, 687.49 feet;
2. South $33^{\circ}50'24''$ East, 11.85 feet; and
3. North $56^{\circ}09'36''$ East, 1202.30 feet to the northerly most corner of said Lot 2, said corner being a point in the southwesterly line of that certain parcel of land described in the lease to East Bay Regional Park District recorded as instrument number 82-065264, Alameda County records;

Thence along said lease line, said line being also the northeasterly line of said Lot 2, South $33^{\circ}50'24''$ East, 610.27 feet to the easterly most corner of said Lot 2, said corner being the northerly most corner of that certain parcel of land described in the lease agreement to Valacal Co. recorded on reel 4529 at image 458, Alameda County records;

Thence along the southwesterly line of said Lot 2, said line being also the northwesterly line of said Valacal Co. lease parcel, South $56^{\circ}09'32''$ west, 1113.91 feet to the intersection thereof with the northeasterly right of way line of Pardee Drive as said drive is described in the city of Oakland resolution number 55137, said point of intersection being the easterly most corner of said Valacal Co. lease parcel;

Thence along said northeasterly right of way line of Pardee Drive, and along the northwesterly and southwesterly right of way lines of said Pardee Drive, said right of way lines being also the general southeasterly lines of said Lot 2, the following three courses:

1. North $33^{\circ}50'28''$ West, 0.28 feet;
2. South $56^{\circ}09'32''$ West, 99.99 feet; and
3. South $33^{\circ}50'28''$ East, 293.07 feet;

Thence continuing along said general southeasterly line of Lot 2, southeasterly and southwesterly along the arc of a 50.00-foot radius, tangent curve to the right, through a central angle of $90^{\circ}00'21''$, an arc distance of 78.54 feet to a point in the aforementioned westerly right of way line of Swan Way;

Thence along said westerly right of way line, said westerly right of way line being also the easterly line of said Lot 2, the following three courses:

1. South $56^{\circ}09'53''$ West, 193.95 feet;
2. Southerly along the arc of a 649.95-foot radius, tangent curve to the left, through a central angle of $43^{\circ}00'00''$, an arc distance of 487.78 feet; and
3. South $13^{\circ}09'53''$ West, 51.88 feet to the TRUE POINT OF BEGINNING.

Containing 35.45 acres, more or less.

End of Description

**California Regional Water Quality Control Board
San Francisco Bay Region**

Recording Requested By:

Arrowhead Marsh LLC
c/o Jon K. Wactor, Esq.
Wactor & Wick LLP
180 Grand Avenue, Suite 950
Oakland, CA 94612

When Recorded, Mail To:

Bruce H. Wolfe, Executive Officer
California Regional Water Quality Control Board
San Francisco Bay Region
1515 Clay Street, Suite 1400
Oakland, California 94612

**COVENANT AND ENVIRONMENTAL RESTRICTION
ON PROPERTY**

Pardee Drive and Swan Way, Oakland, California

This Covenant and Environmental Restriction on Property (this "Covenant") is made as of the __ day of _____, 2004 by Arrowhead Marsh LLC, a Delaware Limited Liability Company ("Covenantor") which is the Owner of record of that certain property situated at Pardee Drive and Swan Way, in the City of Oakland, County of Alameda, State of California, which is more particularly described in Exhibit A of the Mutual Release and Covenant Not to Sue attached hereto and incorporated herein by this reference (such property hereinafter referred to as the "Property"), for the benefit of the California Regional Water Quality Control Board for the San Francisco Bay Region (the "Board"), with reference to the following facts:

A. Contaminants at the Property. Portions of the Property's soil and groundwater contain various regulated chemical compounds, including polycyclic aromatic hydrocarbons, total petroleum hydrocarbons as diesel, gasoline and motor oil, grease, volatile organic compounds, chlorinated solvents and heavy metals, (collectively, "Compounds") as described in various reports filed with the Board, including without limitation, Baseline Environmental Consulting's, "*Phase I/II, Site Assessment, Arrowhead Marsh Site Parcel PO592, Pardee Drive and Swan Way, Oakland, California, December 1999*", and other information and reports referenced therein, and ENV America's "*Phase 1*

Environmental Site Assessment, dated December 2003" and its "*Limited Soil and Groundwater Investigation*, dated February 2, 2004".

B. Property Investigation and Final Remedial Action Plan. The nature and extent of the Compounds in the soil and groundwater at the Property have been defined in the reports on file with the Board. No additional investigation or remediation is required.

C. Exposure Pathways. Compounds are present in soil and groundwater at the Property. Without the mitigation measures incorporated in this Covenant, exposure to the Compounds may be possible as a result of soil excavation or groundwater use. However, the risk of exposure to the Compounds has been substantially lessened by the controls referenced herein.

D. Adjacent Land Uses. The Property is located in a redeveloping area zoned to allow light industrial and other commercial uses and is adjacent to other industrial and commercial properties.

E. Disclosure. To the best of Covenantor's knowledge, extensive sampling of the Property has been conducted and Covenantor is unaware of the presence of hazardous materials on the Property other than the Compounds that have been disclosed to the Board in the Reports on file with the Board.

F. Notice. Covenantor desires to provide notice of certain matters respecting the Property and to impose certain covenants, conditions and environmental restrictions on the Property.

ARTICLE I GENERAL PROVISIONS

1.1 Provisions to Run with the Land. Pursuant to California Civil Code Section 1471, this Covenant sets forth protective provisions, covenants, conditions and restrictions (collectively referred to as "Restrictions") upon and subject to which the Property and every portion thereof shall be improved, held, used, occupied, leased, sold, hypothecated, encumbered, and/or conveyed. The Board has determined that the restrictions set forth in Article III are reasonably necessary to protect present and future human health and safety or the environment as a result of the presence on the Property of the Compounds. Each and all of the Restrictions shall run with the land, and pass with each and every portion of the Property, and shall apply to, inure to the benefit of, and bind the respective successors in interest thereof, for the benefit of the Board and all Owners and Occupants pursuant to Civil Code Section 1471. Each and all of the Restrictions are imposed upon the entire Property unless expressly stated as applicable to a specific portion of the Property. Each and all of the Restrictions are enforceable by the Board and the Covenantor.

1.2 Concurrence of Owners and Lessees Presumed. All purchasers, lessees, or possessors of any portion of the Property shall be deemed by their purchase, leasing, or possession of such Property, to be in accord with and are bound by the provisions of this Covenant and to agree for and among themselves, and their respective members, shareholders, directors, officers, employees, partners, partnerships, agents, representatives, attorneys, heirs, successors, and assigns, that the provisions as herein established must be adhered to for the benefit of the Board, the Covenantor, and the Owners and Occupants of the Property and that the interest of the Owners and Occupants of the Property shall be subject to the provisions contained herein.

1.3 Incorporation into Deeds and Leases. Covenantor desires and covenants that the Restrictions set out herein shall be incorporated in and/or attached to each and all deeds and leases of any portion of the Property.

1.4 Purpose. It is the purpose of this instrument to protect human health and the environment by reducing the risk of exposure to residual Compounds in soils and groundwater.

ARTICLE II DEFINITIONS

2.1 Board. "Board" shall mean the California Regional Water Quality Control Board for the San Francisco Bay Region and shall include its successor agencies, if any.

2.2 Occupants. "Occupants" shall mean Owners and those persons entitled, by any means, including without limitation, by ownership, leasehold, or other legal right or relationship to the right to occupy any portion of the Property.

2.3 Order. "Order" shall mean any and all orders and resolutions adopted by the Board, including Resolution No. R2-2004-0016, adopted on March 18, 2004 and the Mutual Release and Covenant Not to Sue Attachment to the Resolution, together with Exhibits A-D thereto.

2.4 Owner or Owners. "Owner" or "Owners" shall mean the Covenantor and any and all successors in interest, including heirs and assigns, who, by any means, hold title to all or any portion of the Property.

2.5 Soil Management Plan (SMP). Exhibit B to the Mutual Release attached to Board's Resolution No. R2-2004-0016.

ARTICLE III DEVELOPMENT, USE AND CONVEYANCE OF THE PROPERTY

3.1 Restrictions on Development and Use. Covenantor promises to restrict the use of the Property as follows:

a. Development of the Property is prohibited for permanent human habitation under any land use or including single or multi-family housing. Office, retail, commercial, and industrial uses are acceptable uses.

b. Until the Board, or its successor agency, determines that the withdrawal of groundwater from the Property does not pose a significant existing or potential hazard to present or future public health or safety or to the environment, no Owner or Occupant of the Property or any portion of the Property shall drill or otherwise construct a well at the Property for purposes of extracting water.

c. The excavation of soil below the pavement or extraction of groundwater at any depth for any purpose shall not commence unless and until the Owner or Occupant desiring to make the excavation or extract groundwater implements the requirements contained in the SMP. Soil excavation and groundwater extraction that complies with the SMP shall not require a separate plan or separate Board acceptance pursuant to this subparagraph 3.1(c).

d. The Covenantor agrees that the Board, and/or any persons acting pursuant to the Order, shall have reasonable access to the Property for the purposes of inspection, surveillance, maintenance, or monitoring, as provided for in Division 7 of the California Water Code.

e. Except as permitted by the SMP or the Board, no Owner or Occupant of the Property shall act in any manner that will materially exacerbate or contribute to the existing environmental conditions of the Property.

f. All uses and development of the Property shall be consistent with the SMP.

3.2 Enforcement. Failure of the Owner to comply with any of the requirements set forth in paragraph 3.1 shall be grounds for the Board, or the Covenantor by reason of this Covenant, to have the authority to require that the Owner or Occupant modify any use of the Property in material violation of the provisions of subparagraphs 3.1(a) through (e). Material violation by an Owner or Occupant of the Covenant shall be grounds for the Board or Covenantor to file civil actions against the offending Owner or Occupant as provided by law. Nothing in this Section creates the obligation on the part of the Board or the Covenantor to enforce the provisions of the Covenant.

3.3 Notice in Agreements: All purchase and lease agreements for the Property executed after the date of recording of this Covenant shall contain the following statement:

The land described herein contains hazardous substances, as defined in Section 25316 of the California Health and Safety Code, and is subject to the requirements of a Covenant and Environmental Restriction on Property dated _____, 2004, and recorded on _____, 2004, in the Official Records of Alameda County, California, as Document No. _____, which Covenant imposes certain covenants, conditions, and environmental restrictions pursuant to California Civil Code Section 1471 on the use of the property described herein. The provisions of the Covenant are incorporated herein and made a part hereof as if set forth in full. This statement is not a declaration that a hazard exists.

ARTICLE IV VARIANCE AND TERMINATION

4.1 Term. Unless terminated with the written consent of the Board and the original Covenantor, this Covenant shall continue in effect until it can be conclusively demonstrated that there are no Compounds present in, on, under, beneath or migrating onto or off of the Property.

ARTICLE V MISCELLANEOUS

5.1 No Dedication Intended. Nothing set forth herein shall be construed to be a gift or dedication, or offer of a gift or dedication, of the Property or any portion thereof to the general public or for any purpose whatsoever.

5.2 Notices. Whenever any person gives or serves any notice, demand, or other communication with respect to this Covenant, each such notice, demand, or other communication shall be in writing and shall be deemed effective (1) when delivered, if personally delivered to the person being served or to an officer of a corporate party being served or official of a government agency being served, or (2) three (3) business days after deposit in the mail if mailed by United States certified mail, postage pre-paid, return receipt requested:

If To: "Covenantor"

Arrowhead Marsh LLC
c/o Jon K. Wactor, Esq.
Wactor & Wick LLP
180 Grand Avenue, Suite 950
Oakland, CA 94612

If To: "Board"

California Regional Water Quality Control Board
San Francisco Bay Region
Attention: Executive Officer
1515 Clay Street, Suite 1400
Oakland, California 94612

Either party may change its notice address upon ten (10) days advance written notice to the other.

All Notices shall be copied to:

"Port": Port of Oakland
c/o Port Attorney
Michele Heffes, Deputy Port Attorney
530 Water Street, 4th Floor
Oakland, CA 94612

5.3 Partial Invalidity. If any portion or term of the Restrictions set forth in this Covenant is determined to be invalid for any reason, the remaining portions and terms shall remain in full force and effect as if such invalid portion had not been included in this Covenant.

5.4 Article Headings. Headings at the beginning of each numbered article of this Covenant are solely for the convenience of the parties and are not a part of the Covenant.

5.5 Recordation. This instrument shall be executed by the Covenantor and by the Executive Officer of the Board. The Covenantor shall record this instrument in the County of Alameda within ninety (90) days of the date of execution.

5.6 References. All references to Code sections include successor provisions.

5.7 Construction. Any general rule of construction to the contrary notwithstanding, this instrument shall be liberally construed in favor of the Covenant to effect the purpose of this instrument and the policy and purpose of the Water Code. If any provision of this instrument is found to be ambiguous, an interpretation consistent with the purpose of this instrument that would render the provision valid shall be favored over any interpretation that would render it invalid.

IN WITNESS WHEREOF, the parties execute this Covenant as of the date set forth above.

Covenantor: Arrowhead Marsh LLC
A Delaware limited liability company

By: _____
Title: A Member
Date: _____

Agency: State of California
Regional Water Quality Control Board,
San Francisco Bay Region

By: _____
Title: Executive Officer
Date: _____

STATE OF CALIFORNIA)
)
COUNTY OF SAN MATEO)

On _____, 20__ before me, the undersigned a Notary Public in and for said state, personally appeared [Covenantor], personally known to me or proved to me on the basis of satisfactory evidence to be the person who executed the within instrument.

WITNESS my hand and official seal.

Notary Public _____ in and for said
County of SAN MATEO and State of CALIFORNIA

STATE OF CALIFORNIA)
)
COUNTY OF ALAMEDA)

On _____, 20__ before me, the undersigned a Notary Public in and for said state, personally appeared [EXECUTIVE OFFICER], personally known to me or proved to me on the basis of satisfactory evidence to be the person who executed the within instrument.

WITNESS my hand and official seal.

Notary Public _____ in and for said
County OF ALAMEDA and State OF CALIFORNIA

**California Regional Water Quality Control Board
San Francisco Bay Region**

Exhibit D to Mutual Release Attachment to Resolution No. R2-2004-0016

Written Instrument Of Release And Transfer Document

_____ [name of new purchaser, lender, lessee, or occupant] (hereinafter "Released Party"), by signing below verifies and warrants as follows:

1. Released Party has read the recorded Mutual Release and Covenant Not to Sue ("Mutual Release") document, and the related Regional Water Quality Control Board (Regional Board) Resolution No. R2-2004-0016, including Attachment and Exhibits recorded in Book _____, Page _____ in Alameda County, California for the "Property", formerly the Port of Oakland Airport Overflow Parking Lot, located at Pardee Road and Swan Way, Oakland CA.
2. Released Party understands and agrees that the Mutual Release contains a release by the Regional Water Quality Control Board ("Regional Board") and a covenant not to bring or support any action or order against subsequent purchasers, tenants, lenders, and occupants of all or a portion of the Property (as defined in the Mutual Release), including their directors, officers, shareholders, managers, employees, partners, affiliates, members, contractors, agents, successors, and assigns, related to the Known Conditions (as defined in the Mutual Release), including contamination at, under, or originating from the Property (as defined in the Mutual Release).
3. Released Party understands and agrees that it may enjoy the benefits of the Mutual Release only if it releases and covenants not to sue the Regional Board as set forth in the Mutual Release, and that by executing this Release, Released Party releases and covenants not to sue the Regional Board in accordance with the terms of the Mutual Release.
4. Released Party understands and agrees that its right to rely on the benefits of the Mutual Release is subject to and conditioned on its own, but only its own, acceptance of all of the provisions of the Mutual Release and its compliance with its obligations under the terms of the Mutual Release.
5. Released Party accepts and agrees to abide by all provisions of the Mutual Release.

This Instrument of Release and Transfer Document shall be effective upon execution by the Released Party. Within three days of execution, Released Party agrees to mail a copy of the executed Release to: Executive Officer, Regional Water Quality Control Board, San Francisco Bay Region (address as of March 29, 2004, is 1515 Clay Street, Suite 1400, Oakland, CA 94612).

Authorized Signature (Released Party)

Date

Name/Title: _____

Company Name/Address: _____

